

Frank L. Corrado  
BARRY, CORRADO & GRASSI, PC  
2700 Pacific Avenue  
Wildwood, NJ 08260  
(609) 729-1333  
fcorrado@capelegal.com  
Attorney for REFLECTIONS  
BY RUTH D/B/A  
BYTEPHOTO.COM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

GARFUM.COM CORPORATION

Plaintiff,

v.

REFLECTIONS BY RUTH D/B/A  
BYTEPHOTO.COM

Defendant.

Case No. 1:14-cv-05919-JEI-KMW

CERTIFICATION OF JOSEPH C.  
GRATZ, ESQUIRE, IN SUPPORT OF  
FEE PETITION

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Joseph C. Gratz, Esq., being of full age, hereby certifies and says:

1. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.
2. I served as counsel for the defendant and was admitted *pro hac vice* in this matter, pursuant to L. Cv. R. 101.
3. I am an attorney at law, and am currently a member in good standing of the California bar. I was admitted to the California bar in 2005.
4. I am a partner at the law firm Durie Tangri LLP in San Francisco, California.

5. I have extensive experience in patent litigation, and particularly in patent litigation relating to Internet technology. I have represented (among others) JPMorgan Chase, Twitter, LinkedIn, Palo Alto Networks, West Corporation, and Guidewire Software in defending patent litigation related to computer networking and the Internet. Earlier this year, I was named one of the nine Top Intellectual Property Lawyers Under 40 by Law360. I was named a Northern California IP Litigation SuperLawyer in 2013, 2014, and 2015 by SuperLawyers Magazine, after being named a Rising Star in IP Litigation in 2010, 2011, and 2012.

6. Attached as Exhibit A to this certification is a copy of my professional biography as it appears on my firm's website.

7. My services in this case included analysis of plaintiff's patent and claims, assisting with defendant's briefing in support of its motion to dismiss, communicating with opposing counsel, and other general litigation and case management tasks.

8. The relevant provisions of Durie Tangri's fee agreement with defendant are quoted below. This agreement provides that I, and my co-counsel, would provide our services to defendant on a pro bono basis, and that fees would be recovered only from a court-ordered award of attorney's fees. The agreement also provides that my hourly rate for the matter in the event of a fee recovery is the customary rate for my time, which is \$570 per hour. During the defense of this matter, I did not bill the defendants for any fees, and the defendants did not pay me any fees.

9. The relevant provisions of Durie Tangri's fee agreement with defendant are quoted below:

**Fees:** This representation will be *pro bono*, and we will not charge you for our fees and costs in this case, but we reserve the right to seek a recovery of fees and costs pursuant to the Patent Act or other law. We will keep our customary records of hours spent on this matter, and in the event the Court enters an award for attorneys' fees or costs in connection with this matter, you agree that Durie Tangri shall be entitled to recoup the full value of its time worked at its customary rates from any such award as well as costs, up to the amount awarded by the Court based on time billed and costs disbursed by Durie Tangri.

10. My rates are within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle patent litigation. In my experience, because of the specialized nature of patent litigation, defendants in patent suits often hire attorneys from outside their local market to handle such cases.

11. Attached to this certification as Exhibit B is a printout of an itemized set of invoices for my legal services in this matter. The invoice is based on computerized time records that I kept in the normal course of business. These records were created contemporaneously with the performance of the services indicated.

12. The attached billing records show that I spent a total of 11.5 hours on this matter, which is reasonable for the services provided. At a rate of \$570 per hour my total fee in this matter is \$6,555.

13. On March 3, 2015, counsel for Garfum.com Corporation, Austin Hansley, sent an email to me. A true and correct copy of this correspondence is attached as Exhibit C.


14. On March 27, 2015, I sent an email to Austin Hansley, and he responded the same day. A true and correct copy of Mr. Hansley's response, which includes a copy of my earlier email to Mr. Hansley, is attached as Exhibit D.

15. This matter was resolved when Garfum, facing a motion by defendant to dismiss the complaint, provided defendant with a covenant not to sue and unilaterally dismissed its claims with prejudice.

16. I respectfully request that the Court award defendant a total of \$6,555 in fees for the services I performed.

17. Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2015

  
\_\_\_\_\_  
Joseph C. Gratz

# EXHIBIT A

[home](#)[our approach](#)[practice areas](#)[attorneys](#)[Adam R. Brausa](#)[Johanna Calabria](#)[Zac Cox](#)[Daralyn J. Durie](#)[Alex Feerst](#)[Michael A.](#)[Feldman](#)[Joseph C. Gratz](#)[Ryan M. Kent](#)[Elizabeth O. Klein](#)[Mark A. Lemley](#)[Joshua H. Lerner](#)[Sonali D. Maitra](#)[David F.](#)[McGowan](#)[Laura E. Miller](#)[Alex H. Moss](#)[Michael H. Page](#)[Clement S. Roberts](#)[Robert S. J.](#)[Rogoyski](#)[Tim Saulsbury](#)[Sarah E. Stahnke](#)[Ragesh K. Tangri](#)[staff](#)[what's new](#)[contact](#)

## Joseph C. Gratz

[✉ Email Joseph](#)
[📄 Download vCard](#)
[☎ 415-362-6666](#)

B.A., University of Wisconsin-Madison, English, Theatre, 2002

J.D., University of Minnesota Law School, 2005

Joe Gratz is a litigator who is as comfortable on his feet in court as he is hashing over source code with a group of engineers. Vice-Chair of the American Bar Association IP Section's Committee on Copyright and New Technologies, Joe is a respected commentator on copyright and Internet law. In addition to his work at Durie Tangri, Joe teaches Cyberlaw at the University of California – Hastings College of the Law.

A true "digital native," Joe has been on the Internet for more than twenty years. His deep understanding of technical issues and his background as a technical writer (and as an exhibit designer for a science museum) allow him to explain complex technical concepts simply and accurately to judges, juries, and clients. Joe was named one of the nine Top Intellectual Property Lawyers Under 40 by Law360 in 2015, and a Northern California IP Litigation SuperLawyer in 2013 and 2014 by SuperLawyers Magazine, after being named a Rising Star in IP Litigation in 2010, 2011, and 2012.

Before becoming a partner, Joe was Durie Tangri's first associate. He was previously an associate at Kecker & Van Nest LLP, and served as a law clerk to the Honorable John T. Noonan, Jr. of the Ninth Circuit Court of Appeals in 2005-06. Joe graduated Phi Beta Kappa with degrees in English and Theatre from the University of Wisconsin-Madison in 2002. In 2005, he received his J.D., cum laude, from the University of Minnesota Law School, where he was Articles Editor of the Minnesota Journal of Law, Science, and Technology (and director of the law school musical).

Joe has litigated a number of important Internet copyright and trademark disputes. He represents Google in the Google Book Search copyright cases and in the *Rescuecom v. Google* and *Vulcan Golf v.*

*Google* trademark cases. In a pro bono case, Joe argued and won in the Ninth Circuit Court of Appeals on behalf of Troy Augusto, an eBay seller of promotional CDs who had been sued for copyright infringement by the world's largest record company. He authored copyright amicus briefs on behalf of Google in *Flava Works v. Gunter* (7th Cir.) and *Cariou v. Prince* (2nd Cir.) and co-authored an amicus brief with Mark Lemley in the Supreme Court in *Wiley v. Kirtsaeng*, representing the interests of independent bookstores in a first-sale case. He successfully defended the Ninth Circuit's judgment in favor of a credit card processing company in *Perfect 10 v. VISA* against en banc and certiorari attacks. He previously represented artist Shepard Fairey in fair use litigation against the Associated Press over the Obama Hope poster.

Joe has defended technology companies against claims of patent infringement relating to, for example, computer security, mobile-device interfaces, Internet telephony, and WiFi antenna design.

Joe led his team to victory in the 2008 Electronic Frontier Foundation Pub Quiz, breaking the tie with Google, Stanford, and Berkeley by recalling that the speech at issue in the First Amendment case *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), was a parody of a Campari ad.



217 Leidesdorff Street  
San Francisco, California 94111  
P 415-362-6666 F 415-236-6300

# EXHIBIT B



# Durie Tangri

217 Leidesdorff Street  
San Francisco, CA 94111

TEL: 415-362-6666  
FAX: 415-236-6300  
Fed. Tax ID: 26-4153640

Ruth Taylor  
4905 Davis Drive  
Doylestown, PA 18902-1147

**RUTH**  
Statement Date: 03/01/2015  
Statement No. 116039  
Account No. 640.001  
Page No. 1

RE: Garfum.com Corporation v. Reflections by Ruth  
Garfum.com Corporation v. Reflections by Ruth  
Case No. 1:14-cv-05919-JEI-KMW (D.N.J.)

## Professional Services through 02/28/2015

			<u>Rate</u>	<u>Hours</u>	
02/02/2015	JCG	Case management: Memoranda with Nazer.	570.00	0.20	114.00
	JCG	Pleadings, jurisdiction, venue motions: Gather research materials for Nazer re: 101 motions; memorandum to Nazer attaching same.	570.00	0.40	228.00
02/06/2015	JCG	Case management: Memoranda with Ranieri, Nazer re: communications with opposing counsel.	570.00	0.10	57.00
	JCG	Pleadings: Memoranda with Ranieri re: answer.	570.00	0.20	114.00
02/07/2015	JCG	Pleadings, jurisdiction, venue motions: Memoranda with Nazer re: motion to dismiss.	570.00	0.20	114.00
02/10/2015	JCG	Case management: Attention to pro hac vice papers.	570.00	0.20	114.00
	JCG	Pleadings, jurisdiction, venue motions: Review and edit motion to dismiss; memoranda re: same.	570.00	1.80	1,026.00
	JCG	Pleadings, jurisdiction, venue motions: Memoranda re: motion to dismiss.	570.00	0.20	114.00
02/11/2015	JCG	Pleadings, jurisdiction, venue motions: Review motion to dismiss.	570.00	0.30	171.00
02/12/2015	JCG	Case management: Attention to pro hac vice finalization.	570.00	0.20	114.00
02/13/2015	JCG	Pleadings, jurisdiction, venue motions: Memoranda with Nazer, Corrado re: motion to dismiss.	570.00	0.40	228.00
02/15/2015	JCG	Pleadings, jurisdiction, venue motions: Memoranda with Nazer re: motion filing.	570.00	0.20	114.00
02/27/2015	JCG	Pleadings, jurisdiction, venue motions: Memoranda and research re: opposing counsel.	570.00	0.40	228.00

	<u>Rate</u>	<u>Hours</u>	
<b>For Current Services Rendered</b>		4.80	2,736.00

Summary of Fees			
<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joseph C. Gratz	4.80	\$570.00	\$2,736.00

02/28/2015	JCG	Pro bono credit	570.00	-2,736.00
		<b>Total Credits for Fees</b>		-2,736.00

<b><u>Balance Due</u></b>	<u>\$0.00</u>
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Please make checks payable to Durie Tangri LLP

# Durie Tangri

217 Leidesdorff Street  
San Francisco, CA 94111

TEL: 415-362-6666  
FAX: 415-236-6300  
Fed. Tax ID: 26-4153640

Ruth Taylor  
4905 Davis Drive  
Doylestown, PA 18902-1147

**RUTH**  
Statement Date: 04/01/2015  
Statement No. 116172  
Account No. 640.001  
Page No. 1

RE: Garfum.com Corporation v. Reflections by Ruth  
Case No. 1:14-cv-05919-JEI-KMW (D.N.J.)

## Professional Services through 03/31/2015

			<u>Rate</u>	<u>Hours</u>	
03/03/2015	JCG	Case management: Call with Hansley.	570.00	0.10	57.00
	JCG	Case management: Call with Hansley; memoranda re: same.	570.00	0.20	114.00
03/04/2015	JCG	Settlement/mediation: Call with counsel, client representatives re: settlement offer.	570.00	0.30	171.00
03/05/2015	JCG	Case management: Memoranda re: case schedule.	570.00	0.20	114.00
03/17/2015	JCG	Case management: Call with Hansley.	570.00	0.20	114.00
	JCG	Case management: Call with client, cocounsel; memoranda re: call from Hansley.	570.00	0.70	399.00
	JCG	Case management: Draft memorandum to Hansley re: allegation of defamation.	570.00	0.30	171.00
03/18/2015	JCG	Case management: Memoranda with opposing counsel; memoranda re: same.	570.00	0.40	228.00
03/19/2015	JCG	Other motions: Attention to amended pro hac vice certification.	570.00	0.10	57.00
03/20/2015	JCG	Case management: Memoranda with cocounsel re: response to correspondence from Hansley.	570.00	0.30	171.00
03/24/2015	JCG	Case management conference: Attend telephonic court hearing.	570.00	0.30	171.00
	JCG	Case management conference: Memoranda re: case management conference and strategy re: communications with Hansley re: same.	570.00	0.80	456.00
03/26/2015	JCG	Case management: Call with cocounsel re: response to Hansley correspondence.	570.00	0.50	285.00
	JCG	Case management: Call with client, cocounsel re: correspondence from Hansley and response to same.	570.00	0.50	285.00

			<u>Rate</u>	<u>Hours</u>	
03/27/2015	JCG	Case management: Memoranda with Hansley, co-counsel re: counterclaims.	570.00	0.40	228.00
		<b>For Current Services Rendered</b>		5.30	3,021.00
Summary of Fees					
	<u>Timekeeper</u>			<u>Hours</u>	<u>Rate</u>
	Joseph C. Gratz			5.30	\$570.00
					\$3,021.00
03/31/2015	JCG	Pro bono credit	570.00		-3,021.00
		<b>Total Credits for Fees</b>			-3,021.00
<b><u>Advances</u></b>					
03/26/2015		Court filing fees/courier/messenger services--Clerk, District Court for the District of New Jersey			150.00
		<b>Total Advances</b>			150.00
03/31/2015		Pro bono credit			-150.00
		<b>Total Credits for Advances</b>			-150.00
		<b><u>Balance Due</u></b>			<u>\$0.00</u>

Please make checks payable to Durie Tangri LLP

# Durie Tangri

217 Leidesdorff Street  
San Francisco, CA 94111

TEL: 415-362-6666  
FAX: 415-236-6300  
Fed. Tax ID: 26-4153640

Ruth Taylor  
4905 Davis Drive  
Doylestown, PA 18902-1147

**RUTH**  
Invoice Date: 05/01/2015  
Invoice No. 116320  
Account No. 640.001  
Page No. 1

RE: Garfum.com Corporation v. Reflections by Ruth  
Case No. 1:14-cv-05919-JEI-KMW (D.N.J.)

## Professional Services through 04/30/2015

			<u>Rate</u>	<u>Hours</u>	
04/02/2015	JCG	Case management: Memoranda with Corrado re: pro hac vice applications.	570.00	0.10	57.00
04/06/2015	JCG	Pleadings, jurisdiction, venue motions: Review opposition brief.	570.00	0.30	171.00
04/07/2015	JCG	Pleadings, jurisdiction, venue motions: Call re: reply brief; memorandum to Nazer re: same.	570.00	0.50	285.00
04/09/2015	JCG	Pleadings, jurisdiction, venue motions: Edit reply brief.	570.00	0.50	285.00
		<b>For Current Services Rendered</b>		1.40	798.00

## Summary of Fees

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joseph C. Gratz	1.40	\$570.00	\$798.00

04/30/2015	JCG	Pro bono credit.	570.00		-798.00
		<b>Total Credits for Fees</b>			-798.00

Balance Due

\$0.00

Please make checks payable to Durie Tangri LLP

# EXHIBIT C

## Joseph Gratz

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**From:** Austin Hansley <austin@thetexaslawoffice.com>  
**Sent:** Tuesday, March 03, 2015 3:18 PM  
**To:** Joseph Gratz  
**Cc:** Brandon LaPray; Benton Patterson  
**Subject:** Re: Joe Gratz

My client has reviewed your client's financial information that Reflections sent to us, and believes that even if they pursued their case against your client Reflections by Ruth, that they would not get enough damages to justify continuing the suit. Therefore, my client is willing to dismiss the case against Reflections with prejudice and provide a covenant that they won't sue Reflections on any patent that they currently own that may be related to Reflections business. In consideration for this, Reflections would dismiss their counterclaims without prejudice. In addition, my client will not require Reflections to pay any monetary value.

Thanks,

--

Austin Hansley  
**AUSTIN HANSLEY P.L.L.C.**  
Texas Bar No.: 24073081  
5050 Quorum Dr. Suite 700  
Dallas, Texas 75254  
Telephone: (469) 587-9776  
Facsimile: (855) 347-6329  
Email: Austin@TheTexasLawOffice.com  
[www.TheTexasLawOffice.com](http://www.TheTexasLawOffice.com)

On Tue, Mar 3, 2015 at 5:04 PM, Joseph Gratz <[JGratz@durietangri.com](mailto:JGratz@durietangri.com)> wrote:

This is my contact info.

Joseph Gratz | Durie Tangri LLP | [jgratz@durietangri.com](mailto:jgratz@durietangri.com) | [415-362-6666](tel:415-362-6666) | [vCard](#)

# EXHIBIT D



## Joseph Gratz

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**From:** Austin Hansley <austin@thetexaslawoffice.com>  
**Sent:** Friday, March 27, 2015 8:24 AM  
**To:** Joseph Gratz  
**Cc:** Brandon LaPray; Benton Patterson  
**Subject:** Re: Garfum v. Reflections by Ruth

Just to be clear, my client has never considered stipulation that the patent is invalid. That was something that you brought up. My client just wanted to know what the costs and fees are up to this point.

If my client does not want to take the stipulation, then I guess we may then go the Rule 68 route. We are currently preparing our response to your 101 motion.

Thanks,

--

Austin Hansley  
**AUSTIN HANSLEY P.L.L.C.**  
Texas Bar No.: 24073081  
5050 Quorum Dr. Suite 700  
Dallas, Texas 75254  
Telephone: (469) 587-9776  
Facsimile: (855) 347-6329  
Email: Austin@TheTexasLawOffice.com  
[www.TheTexasLawOffice.com](http://www.TheTexasLawOffice.com)

On Fri, Mar 27, 2015 at 10:14 AM, Joseph Gratz <[JGratz@durietangri.com](mailto:JGratz@durietangri.com)> wrote:

Mr. Hansley:

You have asked that we provide you with the total amount of our fees and costs to date, so that you can evaluate whether to stipulate to the relief sought in our counterclaim at this time, before any further fees or costs are incurred.

We have conferred with our client, and our client is willing to forego any payment of fees or costs if your client will stipulate to the invalidity of the patent in suit. We believe this offer renders your question regarding payment of fees and costs moot. Please let us know whether your client will so stipulate, so that we can prepare an appropriate stipulation to file with the court.

Of course, if your client declines, my client reserves the right to seek an award of all fees and costs incurred from the inception of the matter through final judgment.

Joseph Gratz | Durie Tangri LLP | [jgratz@durietangri.com](mailto:jgratz@durietangri.com) | [415-362-6666](tel:415-362-6666) | [vCard](#)